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Supreme Court, U.S.
FILED

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No. _____

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 2001

**BRYAN E. HUNT** (petitioner)
vs.
**LENNARD B. REGISTER, et al.** (respondents)

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ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

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**PETITION FOR WRIT OF CERTIORARI**

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Bryan E. Hunt, pro se
6111 NW 27 Terrace
Gainesville, FL 32653
(352) 375-7363

61 pp

## QUESTIONS PRESENTED FOR REVIEW

I. Does the 'favorable termination' element created by the *Heck* rule in *Heck v. Humphrey*, 512 U.S. 477 (1994) extend to

1. *Bivens* actions;
2. damages actions for 'Fraud Upon a Court';
3. damages actions for 'False Imprisonment'; and
4. non-custody plaintiffs who were maliciously forced to serve their entire unlawful sentences while oppressively being denied the means and opportunity to obtain a 'favorable termination'?

II. Will the Supreme Court please give me a 'favorable termination' by dismissing my *BLATANTLY* void perjury Information because none of my oathful declaration were contradictory as required by Congress in **ANY** perjury prosecution under 18 U.S.C. § 1623 (c) and because the prosecutor:

1. maliciously omitted the exculpatory phrase, '***a couple of times***', from the first question so as to prevent me from proving that he failed his duty of precise questioning;
2. fraudulently agreed to omit my literally true second answer and then failed to prove it was literally false; and
3. maliciously lifted my third answers out of their original context so as to prevent me from proving that my original answers were the literal truth?

III. Did the district judge, who was not a material witness concerning my defrauded plea transcript, show

1. a 'prejudgment' or 'extrajudicial knowledge' of undisclosed facts when he asserted, "Plaintiff's case was properly before Judge Paul and disposed of via a valid guilty plea ... Plaintiff perjured himself in front of a grand jury" and
2. a 'perverse bias' when he **ONLY** dismissed three defendants based on the *Heck* rule and then remanded my case against the last defendant on the grounds that the two federal judgments I was attacking and my damages actions for 'Fraud Upon a Federal Court', 'Federal False Imprisonment', and 'Legal Malpractice' only concerned Florida law issues?

IV. Did the Eleventh Circuit show a 'perverse bias' against me when they

1. dismissed my first appeal as premature because the last defendant still remained;
2. dismissed my second appeal as late, despite the fact that I filed it 23 days after the last defendant was dismissed; and
3. denied my rehearing without ruling on my motion for the Eleventh Circuit to recuse itself?

V. Will the Supreme Court please overrule the Florida Court's summary judgment because I *BLATANTLY* filed my fraud action five months **BEFORE** the limitations ran out and because my disputed fraud issues *BLATANTLY* toll my other damages actions?

## LIST OF PARTIES

The following parties do not appear in the caption and are respondents:

Maurice M. Paul
U.S. district judge
U.S. District Court
401 SE 1 Ave, Suite 243
Gainesville, FL 32601

Judy A. Ellan
U.S. court reporter
U.S. District Court
111 N Adams St
Tallahassee, FL 32301

William R. Wagner
U.S. magistrate judge
U.S. District Court
401 SE 1 Ave, Suite 243
Gainesville, FL 32601

Anthony A. Alaimo
U.S. district judge
U.S. District Court
125 Bull Street, #306
Savannah, GA 31401

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IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 2001

**BRYAN E. HUNT**

**vs.**

**LENNARD B. REGISTER, et al.**

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# PETITION FOR WRIT OF CERTIORARI

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## OPINIONS BELOW

I, Bryan E. Hunt, seek relief from four orders that ended my damages action against four federal officers:

1. an October 10, 2000 federal order that dismissed three defendants [Appendix A];
2. a November 13, 2000 federal order that denied my recuse motion [Appendix B];
3. a February 6, 2001 federal order that remanded my case to a Florida court [Appendix C]; and
4. an April 25, 2001 Florida judgment that dismissed the last defendant [Appendix D].

All orders contain their unpublished opinions. My first appeal of the first two orders was dismissed because one defendant remained [Appendix E]. 23 days after that defendant was released I filed my second appeal, which was dismissed as late [Appendix F].

## JURISDICTION

The federal court never entered a separate judgment and my timely rehearing was denied on March 26, 2002. [Appendix G]. I invoke the jurisdiction of this court via 28 U.S.C. § 1254(1) & 1651(a).

## STATUTORIAL PROVISIONS INVOLVED

18 U.S.C. § 1623 (c) states in pertinent part:

> In any prosecution under this section, the falsity of a declaration set forth in the information shall be established sufficient for conviction by proof that the defendant while under OATH made irreconcilably CONTRADICTORY declarations material to the point in question in any proceeding

before or **ANCILLARY** to any court or grand jury [emphasis added].

Rule 60 (b) of the Fed. R. Cv. P. states in pertinent part:

> The procedures for obtaining **ANY** relief from a judgment shall be by motion as prescribed in these rules or by an independent action [emphasis added].

## STATEMENT OF THE CASE

### Nature of the Case

In a federal court in Gainesville, FL [95:CR1027] I was unlawfully sentenced to 24 months incarceration concerning my coerced *Alford* plea to a void and unsupported perjury Information. My conviction was fraudulently procured and concealed by Judge Paul, AUSA Wagner, Court Reporter Ellan, and Counsel Register. To wit, my Information was void because it failed to establish the five elements of perjury under 18 U.S.C. § 1623 and because it omitted exculpatory testimony that prevent me from proving my original answers were the literal truth and responsive. My *Alford* plea was coerced via, (1) threats of filing bogus charges that would have destroyed my academic and athletic careers; (2) an unfulfilled promise to house arrest; and (3) an unfulfilled promise to amend my Information. No probable cause hearing was held and AUSA Wagner was the **ONLY** witness to falsely testify to the substance of my Information.

When I attacked my criminal judgment via a habeas corpus my oppressors unlawfully conspired to defraud the transcript of my plea hearing, which falsely asserts that I entered a straight guilty plea in exchange

for absolutely nothing. Judge Paul used the defrauded transcript to oppressively refute my habeas corpus without an evidentiary hearing. All of my timely appeals were dismissed without addressing the merits of my disputed fraud issues and no appellate court upheld my criminal and habeas judgments. Ergo, I timely filed a damages action for 'Fraud', 'False Imprisonment', and 'Legal Malpractice' and I demanded a jury trial. I seek to prove,

1. my oppressors had no probable cause;
2. the transcript of my plea hearing was defrauded so as to prevent me from obtaining a favorable termination;
3. I am actually innocent of perjury;
4. my *Alford* plea was coerced via concealed threats and unfulfilled promises; and
5. my attorney was totally ineffective.

My damages actions were summarily dismissed based on the *Heck* rule, absolute immunity, and limitations and my appeals were summarily dismissed without addressing the merits of my disputed fraud issues.

**Statement of Facts**

No Probable Cause

I testified before a grand jury that I did not have any subject matter knowledge concerning a bomb that Jason M. Craft (Craft) threw at a jogger ('the jogger incident'). AUSA Wagner accused me of perjury based on statements by Detective Kittle and ATF Special Agent Riehl, who claim that I made statements to them about 'the jogger incident'. I denied any perjury and told the grand jury that I never made such statements. I

was never indicted because the officers also claim that I made other statements that were logically impossible.

After Craft was indicted and in custody AUSA Wagner and ATF Special Agent Robinson approached Craft. Knowing that Craft had been convicted of nine crimes involving dishonesty, they debriefed him on several occasions, told him he would not be further prosecuted, and offered him a sentence reduction. Craft alleged that we conspired to conceal 'the jogger and other bombing incidents'. AUSA Wagner then filed my perjury Information [Appendix H], which contained,

1. three consistent declaration that I made to the grand jury about 'the jogger incident' [Id. at 2];
2. Detective Kittle's and ATF Special Agent Riehl's statement that I discussed 'the jogger incident' with them [Id. at 2-3]; and
3. Craft's custodial confessions [Id. at 3].

Congress specifically stated in 18 U.S.C. § 1623 (c) that ANY perjury prosecution under this section must prove that contradictory declarations were made under oath in an ancillary proceeding. AUSA Wagner knew all three of my declarations to the grand jury were consistent and knew that the alleged contradictory statement that the officers claim I made was not made under oath, was not made in an ancillary proceeding, and was refuted by the grand jury because I never made the alleged contradictory statement. AUSA Wagner also knew Craft's custodial confessions were tainted, false, unsupported, and blatantly inadmissible.

## Defrauded Plea Transcript

During my plea hearing I waived the reading of my Information and asserted that AUSA Wagner agreed to

omit my truthful second answer and Craft's false custodial confessions. I also objected to the first question and third answer because the omitted testimony prevented me from understanding my answers and I asserted that AUSA Wagner agreed to amend my Information. I further asserted that all of my answers were true and I denied the officer's false statements. I then moved upon the court to enter an *Alford* plea because AUSA Wagner threaten to file conspiracy, aiding-and-abetting, and obstruction charges that would have destroyed my athletic and academic careers at the University of Florida and because I wanted to avoid the stress of a trial. I finally asserted that I had bargained for house arrest.

Judge Paul instructed Court Reporter Ellan to stop recording my plea colloquy, accepted my coerced *Alford* plea to an unknown charge off the record, and then seized my life without a probable cause hearing. My Information was never amended, my sentence was increased by 300% based on the same bogus charges I was told would not be filed, and I never received house arrest. When I appealed my conviction via a habeas corpus, Court Reporter Ellan produced and certified my defrauded plea transcript, which fraudulently alleges that I entered a straight guilty plea in exchange for absolutely nothing and concealed all of my pleading in the preceding paragraph. AUSA Wagner and Counsel Register supported the transcript while Judge Paul used it to refute my habeas corpus without an evidentiary hearing.

My Plea Agreement directly refutes my defrauded plea transcript. To wit, term 'a' stipulated that AUSA Wagner would not file ANY further charges, which I understood to imply the conspiracy, aiding-and-abetting, and obstruction charges that I revealed during

my plea hearing. Term 'c' stipulated that I could withdraw my plea pursuant to Rule 11 (e) of the Federal Rules of Criminal Procedures, which I understood to imply that I could withdraw my plea if I did not receive house arrest or if my sentence was based on ANY further charges. Rule 11 (e) only recognizes four agreements: drop other charges, non-binding sentences, binding-sentences, and logical mixtures of the foregoing.

Actual Innocence

The first question and answer on my Information read [Appendix H at 2],

> Q: Could you tell the grand jurors ... of the times you have seen him explode pipe bombs?
> A: We have exploded some over in the quarries on two occasions. And then when I lived with him in November, behind Prairie View where we lived, there was an open field, and we exploded about two or three there. And those are the only ones I have seen him explode.

AUSA Wagner argued that my underlined answer was perjury because I allegedly concealed Craft's custodial confessions. [Id. at 3]. Yet, fourteen months later when AUSA Wagner disclosed my testimony I discovered that the original question was,

> Q: Could you tell the grand jurors ***of a couple of times*** -- of the times you have seen him explode pipe bombs [emphasis added]?

AUSA Wagner omitted the exculpatory phrase, ***a couple of times***, because he knew that he had failed his duty of precise questioning. At any rate, according to

the original question it was only 'material' that I reveal ***a couple*** seen explosions, which I did. Wagner could have discovered other times with a follow-up question that was more specific, rather than a perjury conviction that destroyed my life!

The second question and answer on my Information read [Id. at 2],

> Q: At any time, sir, did you see Mr. Craft throw a bomb at a jogger?
> A: No, sir.

I objected to my truthful second answer because I was not present during 'the jogger incident' and AUSA Wagner agreed to omit it. Unfortunately, AUSA Wagner denies the foregoing and my plea transcript falsely alleges that I was present, which was a fraudulently dubbed in 'yes sir' answer to a leading and compound question. At any rate, according to the same transcript AUSA Wagner omitted my second answer, I never admitted it was false, and no evidence has ever been presented to prove that I literally saw Craft throw a bomb at a jogger.

The third question and answer on my Information read [Id.],

> Q: And do you recall telling Detective Kittle that Mr. Craft had told you that he had thrown a bomb at a jogger on 34th Street in Gainesville, Florida, and that the bomb had detonated near the jogger?
> A: ***I don't recall that. ... I never made that statement.*** [emphasis added].

However, the original line of questioning was,

Q: And do you recall telling Detective Kittle that Mr. Craft had told you that he had thrown a bomb at a jogger on 34th Street in Gainesville, Florida, and that the bomb had detonated near the jogger?

A: ***I don't recall that.*** [emphasis added].

Q: You don't recall making that statement to Mr. Kittle?

A: Yes, I've told you that before.

Q: You don't recall telling --

A: I've told him several times, too, that ***I never made that statement.*** [emphasis added].

When I was issued my grand jury subpoena I truthfully told Detective Kittle and ATF Special Agent Robinson that I never made statements concerning 'the jogger incident' and both officers confirm this. I again told Detective Kittle and AUSA Wagner the foregoing five days before my testimony. AUSA Wagner lifted my third answers out of their context because he knew they were literally true.

Coerced Plea

I told Judge Paul that AUSA Wagner coerced my *Alford* plea via threats of filing conspiracy, aiding-and-abetting, and obstruction charges and via a specific sentence of house arrest. Later that same day, AUSA Wagner told Judge Paul, PSI Hauser, and Court Reporter Ellan that the government had no readable proof to sustain the same bogus charges. Yet, PSI Hauser later increased my offense level from 12 to 26 based on the same bogus charges and based on a bogus accessory-after-the-fact charge. Term 'a' of my Plea Agreement stipulated that AUSA Wagner would not file ANY further charges. Yet, AUSA Wagner and

Counsel Register raised no objections to my PSR knowing that it advocated bogus charges that were contrary to term 'a' of our agreement. Term 'c' of our agreement stipulated that I could withdraw my plea if the court rejected ANY provision. I have never been given the opportunity to withdraw my plea.

No Defensive Assistance

Counsel Register has already admitted that he never confronted the officers or Craft, never disclosed the entire context of their statements, and never disclosed my grand jury testimony. Counsel Register claims that he advised me to **immediately** enter a blind plea because he believed AUSA Wagner's case was overwhelming; I had no credible defenses; and I would be further charged with conspiracy, aiding-and-abetting, and obstruction charges. Counsel Register then charged my mother the maximum $5000 fee when I was eligible for a public defender for free.

**Disposition in the Courts Below**

No appellate court upheld my criminal and habeas judgments and my disputed fraud issues have never been resolved. Ergo, I timely filed my damages action in a state court in Gainesville, FL for 'Fraud', 'False Imprisonment', and 'Legal Malpractice' and I demanded a jury trial. Judge Paul, AUSA Wagner, and Court Reporter Ellan removed my case to their federal court and then filed a Rule 12(b)(6) dismissal motion. On October 10, 2000 Judge Alaimo dismissed the first three defendants based on the *Heck* rule and immunity because he personally believed, "Plaintiff's case was properly before Judge Paul and disposed of via a valid

guilty plea ... Plaintiff perjured himself before a grand jury." [Appendix A at 11].

On October 20, 2000 I appealed Judge Alaimo's dismissal order to the Eleventh Circuit and thereafter filed a motion for Judge Alaimo to recuse himself based on his 'prejudgment' or 'extrajudicial knowledge' of undisclosed facts and his 'perverse bias' for the three dismissed defendants. Judge Alaimo denied my recuse motion. [Appendix B]. While my appeal was pending I included Judge Alaimo's recuse order. On January 29, 2001 the Eleventh Circuit summarily dismissed my appeal because Counsel Register still remained. [Appendix E]. Seven days later, Judge Alaimo remanded my damages action for 'Fraud Upon a Federal Court', 'Federal False Imprisonment', and 'Legal Malpractice' to a Florida court on the grounds that they only concerned Florida law issues. [Appendix C].

On March 3, 2001 I petitioned this court to review the Eleventh Circuit's dismissal of my first appeal. [US SC # 00-8843]. Meanwhile, on April 25, 2001 the Florida Court dismissed Counsel Register based on the *Heck* rule and limitation. [Appendix D]. On May 14, 2001 this court summarily denied my writ after I informed them of Counsel Register's dismissal. Hence, on May 18, 2001, i.e. 23 days after Counsel Register was dismissed I filed my second appeal back to the Eleventh Circuit concerning Judge Alaimo's dismissal, recuse, and remand orders and the Florida summary judgment.

On May 30, 2001 the Florida First District Court of Appeals ordered me to appeal the foregoing orders to their court despite the fact that I specifically stated in my notice of appeal that I was seeking a federal appeal. [FL 1st Dist. # 1D01-2103]. On November 7, 2001 the Eleventh Circuit summarily dismissed my second appeal as late. [Appendix F]. On December 11, 2001 the

Florida Appellate Court summarily affirmed the Florida summary judgment in a one-word per curiam order and my rehearing was similarly denied on December 19, 2001. My appeal to the Florida Supreme Court was summarily dismissed by the clerk on March 6, 2002 and my rehearing is pending. [FL SC # SC02-474]. On March 26, 2002 the Eleventh Circuit denied my timely rehearing without ruling on my motion for the court to recuse itself. [Appendix G].

## REASONS FOR GRANTING WRIT

### I.a.

**Applying the *Heck* rule to *Bivens* actions directly defies the 'independent action' saving clause of Rule 60 of the Federal Rules of Civil Procedures and has not been squarely addressed by this court.**

Rule 60 (b) states, "The procedures for obtaining ANY relief from a judgment shall be by motion as prescribed in these rules or by an independent action [emphasis added]". In *Heck v. Humphrey, 512 U.S. 477 (1994)* Justices Souter, Stevens, and O'Connor (Justice Souter's posse) all argued that they would LIMIT the *Heck* rule to "state prisoners caught in the intersection of habeas and § 1983" because they believed the *Heck* rule could "needlessly place at risk the rights of those outside the intersection" [emphasis added]. *Heck supra @ 498 & 500.* In *Spencer v. Kemna, 523 U.S. 1 (1998),* Justices Ginsburg and Breyer joined Justice Souter's posse. *Spencer supra @ 20.* Thus, a logical conclusion of Justice Souter's posse is that they would not extend the *Heck* rule to *Bivens* actions because they are outside the intersection. Justices Scalia, Rehnquiste, Kennedy, and Thomas did not address the issue.

**I.b.**

**Applying the *Heck* rule to damages actions for 'Fraud Upon a Court' directly defies Rule 60 (b)(3) of the Federal Rules of Civil Procedures and needlessly impedes the legal rights of fraud victims.**

"Victims of fraudulent judgments can maintain independent actions for 'Fraud Upon a Court' and favorable termination is not a prerequisite." *Rule 60 (b)(3) Fed. R. Cv. P.; Rule1.540 (b)(3) of the FL R. Cv. P.; & In re Estate of Kant, 265 So.2d 524 (Fl. Ap. 3 D. 1972).*

**I.c.**

**Applying the *Heck* rule to damages actions for 'False Imprisonment' directly defies Rule 60 (b)(4) of the Federal Rules of Civil Procedures and needlessly impedes the legal rights of false imprisonment victims.**

"Victims of void judgments can maintain independent actions for 'False Imprisonment' and favorable termination is not a prerequisite." *Rule 60 (b)(4) of the Federal Rules of Civil Procedures; Weyant v. Okst, 101 F.3d 845 (2nd Cir. 1996); & White v. Miami Home Milk Producers Assn., 197 So. 125 (Fla. 1940).*

**I.d.**

**Applying the *Heck* rule to non-custody litigants who were perversely denied the opportunity to obtain a favorable termination conflicts with Justice Souter's posse and is totally unfair.**

Justice Souter's posse specifically stated that they would not apply the *Heck* rule to non-custody litigants. *Heck supra @ 500 & Spencer supra @ 21.* I was not in custody when I filed my damages action. At any rate, "Litigants can counteract the effect of a judgment by

declaring it was unfairly obtained via malice, fraud, and oppression that was designed and had the effect to deprive the litigant of the opportunity and means of obtaining a favorable termination." *Crescent City Live Stock Company v. Butchers' Union Slaughter-House Company, 120 U.S. 141, @ 151 (1887); see Heck supra n.4 at 484-485 and again in n.3 at 496-497.*

**II.**

My perjury Information is *BLATANTLY* void because none of my oathful declarations were contradictory as required by Congress in **ANY** perjury prosecution under 18 U.S.C. § 1623 (c). *United States v. Jaramillo, 69 F.3d 388 (9th Cir. 1995)* [see "No Probable Cause" section for details]. My Information is further void because it omitted exculpatory testimony that prevented me from proving my original answers were the literal truth and responsive. [see "Actual Innocence" section for details]. "A witness may not be convicted of perjury based on literally true answers because precise questioning is the better safeguard and hence a failure to pin a witness down to a material truth can not be corrected with a perjury conviction". *Bronston v. United States, 409 U.S. 352 (1973).*

**III.**

**The immunity functions that Judge Paul and AUSA Wagner performed depended on disputed fraud issues in a jury trial and were perversely resolved by Judge Alaimo based on undisclosed facts.**

Judge Alaimo unlawfully resolved my disputed fraud issues concerning my defrauded plea transcript when he falsely asserted, "Plaintiff's case was properly before Judge Paul and disposed of via a valid guilty

plea ... Plaintiff perjured himself in front of a grand jury". [Appendix A at 11]. Judge Alaimo is not a material witness and no evidence was ever disclosed in any of my actions. Hence, how did Judge Alaimo come to his conclusion?

Judge Alaimo *BLATANTLY* showed a 'perverse bias' when he ONLY dismissed three of the four defendants based on the *Heck* rule and then remanded my case to a Florida court on the ground that my case against the last defendant ONLY concerned Florida law issues. The *Heck* rule is not a selective rule; if it applied to any of the defendants, then Judge Alaimo should have applied it to all of them; its application did not depend on Florida law. At any rate, the two void and fraudulent federal judgments that I am attacking were *BLATANTLY* based on federal laws and my pleadings against Counsel Register, who lives in Tennessee, *BLATANTLY* fall under the Fourth, Fifth, Sixth, and Seventh Amendments of the federal Constitution.

AUSA Wagner had no probable cause and was the ONLY witness to falsely testify to the substance of my Information. "Prosecutors are not entitled to immunity when they lack probable cause or function as a 'complaining witness'." *Buckley v. Fitzsimmons et al.*, 509 U.S. 259 (1993) & *Kalina v. Fletcher*, 522 U.S. 118 (1997). Judge Paul acted as an administrator when he instructed Court Reporter Ellan to stop recording my plea hearing, which was a non-judicial act because it was strictly forbidden by my federal Fifth Amendment right, Criminal Rule 11 (g), and 28 U.S.C. § 753 (b). All of Judge Paul's subsequent acts were done in the complete absence of all jurisdiction, i.e. he unlawfully accepted my coerced *Alford* plea to an unknown charge off the record and then seized my life without a probable cause hearing. "Judges are not entitled to

immunity for non-judicial acts or acts done in the complete absence of all jurisdiction." *Mireles v. Waco, 502 U.S. 9, 11-12 (1991); Forrester v. White, 484 U.S. 219 (1988); & Stump v. Sparkman, 435 U.S. 349 (1978).*

## IV.

**The Eleventh Circuit's dismissal of my first appeal as premature and my second appeal as late reeks of impropriety and mandates intervention by this court.**

I filed my first appeal ten days after Judge Alaimo's dismissal order and I later added his recuse order, both of which *BLATANTLY* terminated my damages action. Whence, the Eleventh Circuit showed a 'perverse bias' when they dismissed my first appeal as premature because one defendant still remained. In regards to my second appeal, the Eleventh Circuit held in *Robinson v. Tanner*, 798 F.2d 1378, 1385 (11th Cir. 1986), "A premature notice of appeal is valid if filed from an order dismissing a claim or party and followed by a subsequent final judgment without a new notice of appeal being filed [emphasis added]." Therefore, the Eleventh Circuit *BLATANTLY* showed a 'perverse bias' when they unlawfully dismissed my second appeal as late because they knew my first appeal was still valid.

At any rate, no separate federal judgment was entered in my case. "The date for filing a notice of appeal does not run until a separate Rule 58 judgment is entered." *United States v. Indrelunas*, 411 U.S. 216 (1973). In addition, the federal remand order contained a recital of pleadings and a record of prior proceedings [Appendix C at 1-9 & 12-13], both of which are forbidden by Civil Rule 54(a). More importantly, "A federal court can not outright remand a damages action

to a state court, but rather must stay the case until the state court rules on the remanded issues." *Quackenbush v. Allstate Insurance Co.*, 517 U.S. 706 (1996). Finally, the Eleventh Circuit's reasons for dismissing my first appeal tolled the time to file my second appeal until the last defendant was dismissed. Thus, my second appeal was *BLATANTLY* timely because I filed it **23 days** after the last defendant was dismissed.

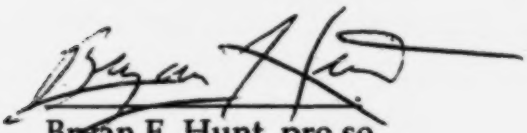
**V.**

Pursuant to Florida Statute § 95.11 (3)(j) I have four years to file a civil action founded on fraud. Court Reporter Ellan did not produce or certify my defrauded plea transcript until October 23, 1996. Hence, my fraud action is *BLATANTLY* **not** barred because I filed my damages complaint on May 30, 2000.

**CONCLUSION**

My petition for writ of certiorari should be granted.

On April 15, 2002, I, Bryan E. Hunt, the petitioner, swear under penalty of perjury that the foregoing pleadings are true to the best of my knowledge and were submitted in good faith.



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# APPENDIX TO PETITIONER'S WRIT

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**In the United States District Court**
**for the Northern District of Florida**
**Gainesville Division**

| | | |
|---|---|---|
| BRYAN E. HUNT | : | CIVIL ACTION |
| Plaintiff, | : | |
| v. | : | |
| LENNARD B. REGISTER, III<br>WILLIAM R. WAGNER,<br>MAURICE M. PAUL, and<br>JUDY ELLAN, | :<br><br>:<br><br>: | |
| Defendants. | | NO. CV100-122 |

**ORDER**

Plaintiff, Bryan E. Hunt, brings this Bivens[1] action against Defendants alleging a violation of his constitutional rights based on a conspiracy to falsely imprison him and his subsequent false imprisonment. Currently before the Court is a Motion to Dismiss for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). Specifically, three Defendants, Assistant United States Attorney William R. Wagner ("AUSA Wagner"), the Honorable Maurice M. Paul ("Judge Paul"), and Court Reporter Judy Ellan ("Court Reporter Ellan"), have moved the Court to dismiss Plaintiff's Complaint

[1] A reference to the case Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), which established that monetary damages may be sought for constitutional violations by federal officers.

against them. For the reasons stated below, Defendants' Motion to Dismiss for failure to state a claim will be GRANTED.

## FACTS

Plaintiff filed his Complaint in the Circuit Court of the Eighth Judicial Circuit in and for Alachua County, Florida, on May 30, 2000. Defendants removed Plaintiff's Bivens action to the United States District Court for the Northern District of Florida pursuant to the federal removal statute, 18 U.S.C. § 1442. Removal to the federal district court was correctly effected following the procedures prescribed by 18 U.S.C. 1446. For the purpose of this Motion to Dismiss, the Court takes the facts as stated by Plaintiff in his Complaint as true. Thus, the following facts come primarily from that Complaint.

Plaintiff's Complaint alleges that Defendants conspired to falsely imprison him when he pleaded guilty to a charge of perjury in the United States District Court for the Northern District of Florida in late 1995.

Specifically, Plaintiff explains that he was subpoenaed to testify before a federal grand jury in January 1995. AUSA Wagner was the prosecutor seeking indictments before that grand jury. Plaintiff testified before the grand jury and, in the aftermath, AUSA Wagner prosecuted Plaintiff for perjury in his grand jury testimony.

Plaintiff retained Defendant, Lennard B. Register, III ("Register"), to defend him against the perjury prosecution. Plaintiff alleges that instead of defending his interests, Register advised Plaintiff to enter into negotiations immediately with AUSA Wagner to find a

suitable guilty plea. Plaintiff further alleges that Register and AUSA Wagner coerced Plaintiff into entering a guilty plea to an unsupported perjury charge that resulted in a sentence of twenty-four months imprisonment. Plaintiff claims that both Register and AUSA Wagner promised that Plaintiff would only be sentenced to house arrest and that if he refused to plead guilty to the perjury charge, AUSA Wagner would charge him with substantially greater charges including "conspiracy, obstruction of justice, and aiding and abetting."

Plaintiff alleges that, during his arraignment, he did not admit his guilt, but rather asserted his innocence and informed Judge Paul that the guilty plea was coerced by threats of additional charges. Plaintiff claims that he told Judge Paul about the promised sentence of house arrest, who responded by Instructing Court Reporter Ellan to omit Plaintiff's comments from the record. Plaintiff contends that Judge Paul took this action in order to conceal the lack of voluntariness of Plaintiff's guilty plea. On January 19, 1996, Judge Paul accepted Plaintiff's guilty plea to the perjury charge, and he was sentenced to twenty-four months imprisonment.

Plaintiff did not mount a direct appeal to his sentence. He claims he failed to appeal because Judge Paul, AUSA Wagner, and Register made him believe he could not appeal his sentence. Nevertheless, Plaintiff did collaterally attack his sentence by filing a habeas corpus petition under 18 U.S.C. § 2255.

Plaintiff claims that the conspiracy to falsely imprison him continued as he sought habeas corpus relief. Plaintiff alleges that Court Reporter Ellan produced an incomplete arraignment transcript that omitted Plaintiff's comments demonstrating the

involuntary and uninformed nature of his guilty plea. Plaintiff also claims that AUSA Wagner and Register made direct references to the arraignment transcript, knowing it was "false and incomplete," in order to cover up the conspiracy and Plaintiff's false imprisonment.

In Plaintiff's Complaint, he contends that Judge Paul covered up his false imprisonment and the conspiracy to falsely imprison him by denying a hearing on his habeas corpus petition, refusing to produce the statements of innocence and coercion omitted from the arraignment transcript, denying habeas corpus relief, and then refusing to issue a certificate of appealability.

All Plaintiff's attempts to overturn or challenge his plea and conviction for perjury failed. Plaintiff never directly appealed his perjury conviction and his habeas corpus petition was denied by every court considering it. Plaintiff exhausted his habeas corpus relief when the United States Supreme Court denied his petition for a writ of certiorari in Case No.97-9620. Plaintiff now attempts to recover against Defendants based on a civil suit for false imprisonment and conspiracy to falsely imprison him. Before the Court is the Motion to Dismiss from Defendants, AUSA Wagner, Judge Paul, and Court Reporter Ellan.

## I. Failure to State a Claim

Defendants ask the Court to dismiss Plaintiff's civil suit against them because it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The rule of Heck v. Humphrey, 512 U.S. 477, 486-87, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383 (1994), applies to this case because Plaintiff's contentions essentially question

the lawfulness of his prior perjury conviction.[2] Specifically, the United States Supreme Court held that

> "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a ... plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, ... or called into question by a federal court's issuance of a writ of habeas corpus ..."

Id. Furthermore, the Court held that a "claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable ... " Id.

Plaintiff, in essence, challenges the very lawfulness of his conviction by suing Defendants for false imprisonment and conspiracy to falsely imprison him. Plaintiff states that this civil action turns on the invalidity of the perjury conviction: "If the jury agrees that I am innocent and that the Defendants are corrupt, *then my conviction is invalid and the Defendants are liable.*" (Plaintiff's Opposition to 'Defendants Paul, Wagner, and Ellan Motion to Dismiss.') Thus, even Plaintiff, himself, realizes this suit challenges the very validity of his prior perjury conviction, which has never been overturned or called into doubt by any court. As a result, Plaintiff's civil action against Defendants fails to

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[2] It is true that Heck was a 28 U.S.C. § 1983 case. However, the United States Court of Appeals for the Eleventh Circuit has held that because of the similarities between § 1983 and Bivens suits, the Heck rule applies to Bivens cases as well. See Abellla v. Rubino, 63 F.3d 1063, 1065 (11th Cir. 1995).

state a claim because the Bivens action is not cognizable until the perjury conviction is undermined. See Abella v. Rubino, 63 F.3d 1063, 1065 (11 th Cir. 1995).

In fact, Plaintiff's case is much the same as the Abella case. In Abella, the still-imprisoned Plaintiff brought suit against several federal judges, an Assistant United States Attorney, several court reporters, a judicial law clerk, a secretary, and other federal law enforcement personnel, claiming that the defendants conspired to convict him by fabricating testimony and evidence against him. After the district court dismissed the Bivens complaint on other grounds, the Eleventh Circuit held that since "Abella's claims rest on the contention that the defendants unconstitutionally conspired to convict him of crimes he did not commit ... his Bivens claims are not ripe." Id. The Eleventh Circuit noted that " [j]udgment in favor of Abella on [the Bivens] claims 'would necessarily imply the invalidity of his conviction."" Id. As a result, the application of the rule from Heck was legitimate and barred the suit until such time "in the future [when he] should ... meet the requirements of Heck." Id.

Likewise, in the case at bar, Plaintiff accuses a federal judge, an Assistant United States Attorney, and a court reporter – along with Plaintiff's own former defense attorney – of conspiring to convict him of perjury. The only meaningful difference between the cases is that, in Abella, the conspiracy involved fabricating testimony and evidence while, in the case at bar, the conspiracy involves an allegedly coerced plea and subsequent cover up. Nevertheless, the difference is meaningless with regard to the applicable law that commands that Plaintiff's action is barred by the Heck rule until the perjury conviction is cast into doubt. As a result, the Court finds that until Plaintiff's convictions

have been invalidated, he cannot sustain a Bivens damages action against Judge Paul, AUSA Wagner, and Court Reporter Ellan for false imprisonment and a conspiracy to falsely imprison him via his perjury plea and subsequent conviction.

## II. Absolute Immunity for the Prosecutor

In addition to the Heck rule, the doctrine of absolute immunity bars Plaintiff's Bivens claims against AUSA Wagner. Prosecutors have long enjoyed absolute immunity "in initiating a prosecution and in presenting the State's case ..." Imbler v. Pachtman, 424 U.S. 409,431 ,96 S. Ct. 984, 995, 47 L. Ed. 2d 128 (1976).[3] A prosecutor is protected by "absolute immunity from damages for acts associated with the judicial process ... " Bolin v. Story, No.99-13880, 2000 WL 1263827, * 9 (11th Cir. Sept. 6, 2000). Specifically, "absolute immunity appl[ies] with full force" to bar suits that involve prosecutorial "activities ... intimately associated with the judicial phase of the criminal process ... " Imbler, 424 U.S. at 430, 96 S. Ct. at 995, 47 L. Ed 2d 128. The United States Supreme Court has held that a prosecutor is absolutely immune from civil damages law suits when he is acting in his "role as advocate for the State." Id. at 431 n.33; accord Buckley v. Fitzsimmons, 509 U.S. 259, 272, 113 S. Ct. 2606, 2615, 125 L. Ed. 2d 209 (1993); Burns v. Reed, 500 U.S. 478, 491, 11 S. Ct. 1934, 1941, 114 L. Ed. 2d 547 (1991). Thus, the Court has held that prosecutors enjoy absolute immunity for their actions as advocates for the

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[3] Although many of the cases involving absolute immunity for prosecutors arise under 28 U.S.C. § 1983, the same absolute immunity is enjoyed by federal prosecutors when civil plaintiffs seek damages under Bivens. See Bolin v. Story, No. 99-13880, 2000 WL 1263827, *8 (11th Cir. Sept. 6, 2000).

State for pretrial proceedings as well as the trial itself. See Burns, 500 U.S. at 491-92, 111 S. Ct. at 1941-42; accord Buckley, 509 U.S. at 272-73, 113 S. Ct. at 2615.

Plaintiff claims that AUSA Wagner began an unwarranted jury investigation, coerced his guilty plea to the perjury charge, prevented him from understanding the elements of the charge against him, and made him believe he could not appeal his sentence. But each of these allegations involves times when AUSA Wagner was acting in his role as advocate for the State. As a result, since Plaintiff's claims of wrongdoing all involve conduct when AUSA Wagner was intimately involved with the judicial phase of the criminal process. Plaintiff's suit is barred by the prosecutor's quasi-judicial absolute immunity. Specifically, there is no question that when a prosecutor appears before a grand jury, initiates perjury charges, negotiates a plea bargain, and appears at a sentencing proceeding, the prosecutor is acting as an advocate for the State and intimately involved in the judicial phase of the criminal process. At those points, the prosecutor is not investigating crime nor is he acting as an administrator of the public justice system. Instead, those are the very times when the prosecutor attempts to pursue the public justice by getting indictments and proceeding toward successful convictions. Thus, Plaintiff's allegations, even it true, are barred by the absolute immunity enjoyed by AUSA Wagner. As a result, the Court finds that it Should grant Defendants' Motion to Dismiss the complaint against AUSA Wagner.

## III. Absolute Immunity for the Judge

Likewise, judges have traditionally been insulated from civil damages suit for their official conduct by the doctrine of absolute immunity. Thus, Plaintiff's civil damages suit against Judge Paul is not only barred by the Heck rule but also by the absolute immunity enjoyed by the Judge.

In Pierson v. Ray, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967), the United States Supreme Court confirmed that judges enjoyed absolute immunity in civil rights actions.[4] The Court noted that "[t]his immunity applies even when the judge is accused of acting maliciously and corruptly, and 'it is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.'" Id. at 554. (citations omitted). Thus, later in Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978), the Court held that an Indiana circuit court judge was absolutely immune even when he ordered her sterilization because she was retarded.

The Stump case "set forth a two part test for determining when a judge is entitled to absolute immunity from money damages liability [sought under by a civil rights lawsuit]." Simmons v. Conger, 86 F.3d 1080, 1084 (11th Cir. 1996) .The first part of the test involves "whether the judge is dealing with the plaintiff

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[4] Although Pierson was a 42 U.S.C. § 1983 case, the courts have applied the same immunities to Bivens suits because of their inherent similarities. See Bolin v. Story, No. 99- 13880, 2000 WL 1263827, *8 (11th Cir. Sept. 6, 2000) ("We have similarly stated that the immunities provided federal officials in Bivens actions are coextensive with those provided state officials from § 1983 actions.").

in a judicial capacity." Id. "It is only for acts performed in his 'judicial' capacity that a judge is absolutely immune ... " Stump, 435 U.S. at 360, 98 S. Ct. at 1106. The Court explained that "the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e. whether it is a function normally performed by a judge, and to the expectations of the parties, i.e. whether they dealt with the judge in a judicial capacity." Id. at 362. " If the judge was not dealing with the plaintiff in a judicial capacity, then there is no immunity." Simmons, 86 F.3d at 1085. However, if the judge was dealing with the plaintiff in a judicial capacity, then the court must examine the second part of the Stump test. The second test asks whether "the judge acted in the "'clear absence of all discretion."'" Id. (quoting Stump, 435 U.S. at 357, 98 S. Ct. at 1105 (quoting Bradley v. Fisher, 80 U.S. (13 Wall.) 335, 351 (1872))). Furthermore, "the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." Stump, 435 U.S. at 356, 98 S. Ct. at 1105. Thus, "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will only be subject to liability when he has acted in the 'clear absence of all jurisdiction.'" Id. at 356-57.

Applying the Stump test to the case at bar, Plaintiff claims that Judge Paul accepted his plea when there was no "readable proof" against Plaintiff, told the court reporter to omit certain statements by Plaintiff from the record, made Plaintiff believe he could not appeal his sentence, and wrongfully denied Plaintiff's petition for habeas corpus relief. At each of these times, Judge Paul is cloaked with absolute judicial immunity because he satisfies the two-part Stump test.

First, during all of the alleged wrongful acts, Judge Paul dealt with Plaintiff in a judicial capacity. Thus, even assuming each of Plaintiff's allegations is true, his civil rights lawsuit is barred by the Judge's absolute immunity. Judge Paul accepted Plaintiff's guilty plea to a perjury charge in open court. Judge Paul controlled his courtroom during criminal proceedings. Judge Paul advised Plaintiff of his rights at sentencing. Judge Paul considered a habeas petition assigned to his docket. These are all actions firmly and normally within the judicial role of a judge. Parties and the public-at-large expect judges to take pleas, control the courtrooms, pronounce sentence, and consider collateral attacks on criminal convictions. As a result, Judge Paul was acting entirely within his judicial capacity, protected by absolute immunity when Plaintiff's alleged actions occurred.

Second, although Plaintiff makes the conclusory allegation that "Judge Paul [h]ad no [j]urisdiction," Plaintiff's criminal case was properly before Judge Paul and disposed of via a valid guilty plea. Thus, it is also true that Judge Paul's alleged actions were not taken in the "clear absence of all jurisdiction." Plaintiff's conviction has been upheld by every court that has reviewed it. Plaintiff perjured himself in front of a grand jury convened in the Northern District of Florida. And Plaintiff was charged and convicted in that same federal district court. Plaintiff has never asserted that Judge Paul lacked jurisdiction over his case, or the power to convict and sentence Plaintiff for his crime. Instead, Plaintiff challenges the merits of his conviction and charge. Plaintiff argues that probable cause never existed and that false testimony supported the charge. No court has ever called Plaintiff's conviction into any doubt, and, even if one did, absolute immunity protects

Judge Paul from the case at bar even if he "was in error, was done maliciously, or was in excess of his authority." Stump, 435 U.S. at 356, 98 S. Ct. at 1105. As a result, Judge Paul acted within his jurisdiction and satisfied the second part of the Stump test, as well.

Thus, the Court finds that absolute immunity shield Judge Paul from Plaintiff's Bivens lawsuit. As a result, plaintiff's Bivens claims against Judge Paul should be dismissed.

## CONCLUSION

After careful and thorough consideration, the Court concludes that Defendants' Motion to Dismiss should be and hereby is GRANTED.

SO ORDERED, this 6th day of October, 2000.

S/

Judge, United States District Court
Southern District of Georgia
Sitting by Designation

**In the United States District Court**
**for the Northern District of Florida**
**Gainesville Division**

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| BRYAN E. HUNT | : | CIVIL ACTION |
| Plaintiff, | : | |
| v. | : | |
| LEN B. REGISTER, III, et al.,: | | |
| Defendants. | : | NO. CV100-122 |

**ORDER**

Upon consideration of the Plaintiff's Motion for Judge Alaimo to recuse himself, the same is hereby DENIED.

**SO ORDERED**, this 10th day of November, 2000.

S/

Judge, United States District Court
Southern District of Georgia
Sitting by Designation

**In the United States District Court**
**for the Northern District of Florida**
**Gainesville Division**

| | | |
|---|---|---|
| BRYAN E. HUNT | : | CIVIL ACTION |
| Plaintiff, | : | |
| v. | : | |
| LEN B. REGISTER, III, | : | |
| Defendant. | : | NO. CV100-122 |

**ORDER**

Plaintiff, Bryan E. Hunt, brought this Bivens[1] action originally against multiple defendants who were involved in his prior criminal proceedings before a United States District Court. The Court dismissed the three federal defendants – a federal district judge, an Assistant United States Attorney, and a court reporter -- because Plaintiff's claims against them were barred as a matter of law by the rule of Heck v. Humphrey, 512 U.S. 477, 486-87, 114 S. Ct. 2364, and the doctrine of absolute immunity.[2] As a result, Lennard B. Register,

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[1] A reference to the case Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), which established that monetary damages may be sought for constitutional violations by federal officers.

[2] The claims against the federal district judge and the Assistant U.S. Attorney were barred by both the doctrine of absolute immunity and the rule of Heck v. Humphrey, 512 U.S. at 486, 487, 114 S. Ct. at 2372, while the claims against the court reporter were only barred by the Heck rule, since court reporters are not entitled to prosecutorial or judicial immunity.

III, Plaintiff's former criminal defense attorney, remains as the sole Defendant in the case at bar. Currently before the Court are a number of motions: (1) Plaintiff's "Motion for Partial Summary Judgment Against the Defendant Register;" (2) Plaintiff's "Motion for Summary Judgment Against Register's First Affirmative Defense;" (3) Plaintiff's "Motion to Set Aside This Court's Order Dismissing the Defendants: Wagner, Paul, and Ellan;" and (4) Defendant, Register's Motion for Summary Judgment. For the reasons stated below, the Court will take the following actions. First, the Court will DENY the Motion to Set Aside the Court's Order dismissing Defendants, Paul Wagner, and Ellan from this lawsuit. Second, the Court will not delve into the merits of the various motions for summary judgment because the Court believes it should exercise its discretion and REMAND the case back to the state court where it was originally filed.

## BACKGROUND

Plaintiff, Bryan E. Hunt, filed his Complaint in the Circuit Court of the Eighth Judicial Circuit in and for Alachua County, Florida, on May 30, 2000. Because Plaintiff was suing several "federal officers," Defendants removed Plaintiff's Bivens action to the United States District Court for the Northern District of Florida pursuant to the federal removal statute, 28 U.S.C. § 1442.[3] Removal to the federal district court was

[3] Specifically, Plaintiff originally named as Defendants the Honorable Maurice M. Paul. United States District Judge for the Northern District of Florida; William R. Wagner, Assistant United States Attorney; and Judy Ellan, Official Court Reporter for the United States District Court for the Northern District of Florida. Section 1442 allows for the removal of such

correctly effected following the procedures prescribed by 28 U.S.C. § 1446. Since the federal officers removed Plaintiff's case to the Court with the consent of Defendant, Register, Plaintiff has moved the Court to remand his case to state court no fewer than three times. See Plaintiff's Third Unanswered Motion to Remand This Case Back to Florida Court (Doc. 54, filed Nov. 11, 2000); Plaintiff's "Motion for Ruling On All Motions Filed in State Court" (Doc. 11, filed July 28,2000); Plaintiff's "Motion to Remand This Action to State Court" (Doc. 4, filed July 6, 2000) . Nevertheless, the Court had valid jurisdiction because Plaintiff's suit alleged constitutional violations by federal officers. See 28 U.S.C. § 1442. Thus, Plaintiff's claims are clearly federal questions. See 28 U.S.C. § 1331. The Court also could exercise jurisdiction over Plaintiff's state claims against the non-federal officer Defendant, Register, through supplemental jurisdiction. See 28 U.S.C. § 1367.

Turning to the Complaint, Plaintiff alleges that the four original Defendants -- his former criminal defense attorney, Lennard B. Register, III; Assistant United States Attorney, William R. Wagner; the Honorable Maurice M. Paul; and Court Reporter, Judy Ellan, -- are responsible for falsely imprisoning him when he pleaded guilty to a charge of perjury in the United States District Court for the Northern District of Florida in late 1995.

Specifically, Plaintiff explains that he was subpoenaed to testify before a federal grand jury in January 1995. One of the Defendants, Assistant United States Attorney, William R. Wagner, was the prosecutor seeking indictments before that grand jury. Plaintiff

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cases to a federal district court as a matter of right. See 28 U.S.C. § 1442(a).

testified before the grand jury and, in the aftermath, Mr. Wagner prosecuted Plaintiff for perjury in his grand jury testimony.

Plaintiff retained another of the Defendants in the case at bar, Lennard B. Register, III, to defend him against the perjury prosecution. Plaintiff alleges that instead of defending his interests, Register advised Plaintiff immediately to enter negotiations with Assistant United States Attorney, Wagner, to find a suitable guilty plea. Plaintiff further alleges that Register and Wagner coerced Plaintiff into entering a guilty plea to an unsupported perjury charge that resulted in a sentence of twenty-four (24) months imprisonment. Plaintiff claims that both Register and Wagner promised that Plaintiff would only be sentenced to house arrest and that if he refused to plead guilty to the perjury charge, Wagner would charge him with substantially greater charges, including "conspiracy, obstruction of justice, and aiding-and-abetting."

Plaintiff alleges that, during his arraignment, he did not admit his guilt, but rather asserted his innocence and informed Judge Paul, another Defendant in this action, that the guilty plea was coerced by threats of more charges. In his Complaint, Plaintiff also claims that he told Judge Paul about the promised sentence of house arrest, but that Judge Paul responded by instructing the court reporter, Defendant, Judy Ellan, to omit Plaintiff's comments from the record in order to conceal the lack of voluntariness of Plaintiff's guilty plea. Judge Paul accepted Plaintiff's guilty plea to the perjury charge and Plaintiff was sentenced to 24 months imprisonment on January 19, 1996.

Plaintiff did not mount a direct appeal to his sentence. Plaintiff claims he failed to appeal because

Judge Paul, Assistant United States Attorney Wagner, and Register all made him believe he could not appeal his sentence. Nevertheless, Plaintiff did collaterally attack his sentence by filing a habeas corpus petition under 28 U.S.C. § 2255.

Plaintiff claims the Defendants continued to be responsible for his false imprisonment as he sought *habeas corpus* relief. He alleges that Defendant, Ellan, produced an incomplete arraignment transcript that omitted Plaintiff's comments demonstrating the involuntary and uninformed nature of his guilty plea. Plaintiff also claims that Wagner and Register made direct references to the arraignment transcript knowing it was "false and incomplete" in order to cover up the Plaintiff's false imprisonment and their responsibility in sending an innocent man to prison.

Plaintiff contends that Judge Paul covered up Plaintiff's false imprisonment by denying a hearing on his habeas corpus petition, refusing to produce the statements of innocence and coercion omitted from the arraignment transcript, denying habeas corpus relief, and then refusing to issue a certificate of appealability. He claims that Judge Paul took all of these actions to cover-up Plaintiff's false imprisonment and Judge Paul's responsibility for that false imprisonment.

All of Plaintiff's attempts to overturn or challenge his plea and conviction for perjury failed. Plaintiff did not directly appeal his perjury conviction and his *habeas corpus* petition was denied by every court that considered it. Plaintiff exhausted his *habeas corpus* relief when the United States Supreme Court denied his petition for a writ of certiorari in Case No.97-9620. Plaintiff's next step was to attempt to recover civil

damages against these Defendants in this Bivens action for false imprisonment. The Court dismissed the three federal officer Defendants -- namely, Judge Paul; Assistant United States Attorney, Wagner; and Court Reporter, Ellan, -- because Plaintiff's claims against "them were barred as a matter of law by the Heck rule and absolute immunity. Thus, the only remaining Defendant is Register, Plaintiff's former criminal defense attorney.

## MOTION TO SET ASIDE THE ORDER DISMISSING THE FEDERAL OFFICER DEFENDANTS

Plaintiff insists the Court should not have dismissed the federal officer Defendants from this lawsuit. Plaintiff asks the Court to reconsider and set aside its previous Order holding the claims against them were barred as a matter of law. The Court refuses to do.

The Court will not take too much time to restate the law mandating its prior ruling, however, it is clear Plaintiff failed to state a claim against any of the three federal officer Defendants. First, Judge Paul is immune from such a civil suit because, at all times, he was cloaked in absolute judicial immunity. See Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099. 55 L. Ed. 2d 331 (1978); Pierson v. Ray, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967); Simmons v. Conger, 86 F.3d 1080 (11th Cir. 1996). All of Plaintiff's allegations demonstrate that Judge Paul was performing core judicial functions that clearly are protected by absolute immunity. See Compl.

Second, Assistant United States Attorney, Wagner, is likewise immune from Plaintiff's Bivens suit because,

at all relevant times, he was protected by absolute prosecutorial immunity. See Buckley v. Fitzsimmons, 509 U.S. 259, 113 S. Ct. 2606, 125 L. Ed. 2d 209 (1993); Burns v. Reed, 600 U.S. 478, 11 S. Ct. 1934, 114 L. Ed. 2d 547 (1991); Imbler v. Pachtman, 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976); Bolin v. Story, 225 F.3d 1234 (11th Cir. Sept. 6, 2000). Again, all of Plaintiff's allegations demonstrate that Assistant United States Attorney Wagner was performing core prosecutorial duties that are entitled to protection from suit by absolute immunity. See Compl.

Third, the rule of Heck v. Humphrey 512 U.S. 477, 486-87, 114 S. Ct. 2364, 2372, 129 L. Ed. 2d 383 (1994), acts as a bar to all of Plaintiff's claims against the federal officer Defendants. The Heck rule states that "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a ... plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, ... or called into question by a federal court's issuance of a writ of habeas corpus ... " Id. In the case at bar, Plaintiff claims all relate to his allegation that his incarceration amounted to false imprisonment because he is innocent. For that claim to be cognizable as a matter of law, the Heck rule insists that Plaintiff's conviction, which was the reason for his incarceration, be called into question. However, Plaintiff's conviction was never overturned nor did any court grant his *habeas corpus* petition. Thus, until his conviction is invalidated by some court, Plaintiff's claims against all three federal officer Defendants are barred as a matter of law by the Heck rule.

This, in short, is why the Court dismissed all of Plaintiff's claims against the federal officer Defendants. Having again reviewed the Order dismissing them, the Court sees no reason to revisit the issue. Thus, the Court concludes that Plaintiff's Motion to Set Aside the Order dismissing Defendants, Paul, Wagner, and Ellan, should be DENIED.

**REMAND TO STATE COURT**

Plaintiff originally filed his action against all four Defendants in the Circuit Court of the Eighth Judicial Circuit in and for Alachua County, Florida, on May 30, 2000. The three federal officer Defendants sought removal to the United States District Court for the Northern District of Florida, pursuant to a special removal statute that makes federal removal a matter of right when federal officers are sued in their official capacities. See 28 U.S.C. § 1442(a). Thus, the suit was removed pursuant to Section 1442 after Defendant, Register, consented, to the removal. It should also be stated, however, that the suit could have been removed under the general federal removal statute because the Bivens claims against the three federal officer Defendants involved federal questions – namely, whether they violated Plaintiff's federal constitutional rights. See 28 U.S.C. § 1441. Thus, the action was removable generally because the Court had original jurisdiction over Plaintiff's claims against the three federal officer Defendants because those claims constituted federal questions under 28 U.S.C. § 1331. Furthermore, the Court had proper jurisdiction over Plaintiff's claims against Defendant, Register, a private party, under its supplemental jurisdiction. See 28 U.S.C. § 1367(a).

Both before and after this action was removed, Plaintiff has made it clear that he would prefer to be in state court. When the three federal officer Defendants removed the action to this federal district court, Plaintiff filed a motion in state court "to stop the Defendants from moving my case to any federal court." In addition, Plaintiff filed a "Motion to Remand This Action to State Court' just three days after removal was effected. See Pl.'s Mot. To Remand This Action to State Ct. (Doc. 4, filed July 6, 2000). Plaintiff again moved the Court to remand his case to state court after the dismissal of all claims against the three federal officer Defendants. See Pl.'s Third Unanswered Mot. To Remand the Case Back to Fla. Ct. (Doc. 54, filed Nov. 7, 2000).

Now that all of Plaintiff's claims against the federal officer Defendants have been dismissed, the only claims that remain are brought against a private party, Defendant, Register. This has some significance, jurisdictionally speaking. The claims against the federal officer Defendants raised federal questions, namely whether the federal officers violated Plaintiff's federal constitutional rights. Thus, the Court exercised federal question jurisdiction with regard to those claims. See 28 U.S.C. § 1331 (a). However, with respect to Plaintiff's claims against Defendant, Register, a private party, the Court exercised supplemental jurisdiction because only state law questions were presented by those claims. See 28 U.S.C. § 1367(a). Now that the Court has dismissed all of the claims raising federal questions, and there is no claim over which the Court would have original jurisdiction, the Court will, in its discretion, decline to exercise further its supplemental jurisdiction. See 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction over a claim ... if ...

the district court has dismissed all claims over which it has original jurisdiction ..."). As a result, the Court concludes Plaintiff's claims against Defendant, Register, which are all state law claims, should be remanded to the state court where the action was originally filed.

## I. Discretion to Decline to Exercise Supplemental Jurisdiction

The federal supplemental jurisdiction statute explicitly grants district courts discretion so that they "may decline to exercise supplemental jurisdiction over a claim" under certain conditions. 28 U.S.C. § 1367(c). Specifically, a federal district court "may decline to exercise supplemental jurisdiction" when:

(1) the claim raises a novel or complex issue of State law;
(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction;
(3) *the district court has dismissed all claims over which it has original jurisdiction [Emphasis added]:* or
(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

Id. (emphasis added). Likewise, the United States Court of Appeals for the Eleventh Circuit has held that the "discretionary authority under 28 U.S.C. § 1367 ... empowers [federal district courts] to decline to exercise supplemental jurisdiction over a state law claim if it has dismissed all of the related claims over which it has original jurisdiction." Englehardt v. Paul Revere Life Ins. Co., 139 F.3d 1346, 1350 (11th Cir. 1998). Thus,

"under 28 U.S.C. § 1367(c), the Court has the discretion to decline to exercise supplemental jurisdiction over non-diverse state law claims, where the Court has dismissed all claims over which it had original jurisdiction ..." Baggett v. First Nat'l Bank of Gainesville, 117 F.3d 1342, 1352 (11th Cir. 1997) (citing Palmer v Hospital Auth. Of Randolph County, 22 F.3d 1559, 1567-68 11th Cir. 1994).

Furthermore, federal district courts can remand state claims when they decline to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(c). For example, the Eleventh Circuit held that " [w]hile § 1367(c) permits a court to dismiss any state law claims where the court has dismissed all the claims over which it had original jurisdiction, the court also can consider other" options. Baggett, 117 F .3d at 1353. In a related case, the Eleventh Circuit was clear that "a district court has the discretion to remand pendent claims to state court when doing so furthers the principles of judicial economy, convenience, fairness, and comity."[4] *In re* City of Mobile, 75 F.3d 605, 607 (11th Cir. 1996) (citing Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 357, 108 S. Ct. 614, 622-23, 98 L. Ed. 2d 720 (1988)). Baggett, 117 F .3d at 1353 (citing Palmer, 22 F.3d at 1569). Finally, the Eleventh Circuit has been firm that "[s]tate courts, not federal courts, should be the final arbiters of state law." Baggett 117 F.3d at 1353 (citing Hardy v. City of Birmingham Bd. Of Educ., 954 F.2d 1546, 1553 (11th Cir. 1992). Thus, it is little surprise that in other actions

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[4] The federal supplemental jurisdiction statute codifies the traditional concepts of ancillary and pendent jurisdiction under the name supplemental jurisdiction. Simply explained. 28 U.S.C. § 1367(a) grants the federal judiciary congressional approval to extend supplemental jurisdiction to the limits of the Constitution. Section 1367(b) and (c) reduce that grant.

where the court has dismissed all federal claims prior to trial, the Eleventh Circuit has held that "the state law claims remaining ... are best resolved by the [state] courts." Badgett, 117 F.3d at 1353 (citing United Mine Workers v. Gibbs, 383 U.S. 715, 726, 86 S. Ct. 1130, 1139, 16 L. Ed. 2d 218 (1966)).

As a result, the Court now undertakes determining whether Plaintiff's only remaining claims stated against Defendant, Register, are state law claims. And if so, whether those claims should be remanded back to the state court of original filing.

## II. Plaintiff's Claims Against Register

On its face, Plaintiff's Complaint states several claims against Defendant, Register: legal malpractice, fraud, and false imprisonment. All of these claims relate to Register's representation of Plaintiff when he was charged with perjury in his prior grand jury testimony. Specifically, Plaintiff first claims Register committed fraud by promising him house arrest for pleading to the perjury charge brought by Assistant United States Attorney, Wagner. In addition, Plaintiff claims Register committed fraud by coercing him into accepting the guilty plea without telling him about the supposed weaknesses of the Government's case. Second, Plaintiff claims Register committed legal malpractice by advising him to "immediately enter [plea] negotiations" with the prosecutor even though Register had not investigated Plaintiff's case and possible defenses. Plaintiff also claims the Register never made any attempt to develop a defense case as more support for his legal malpractice claim. Third, Plaintiff alleges that Register committed fraud again by not informing him about the essential elements of his crime and by leaving

out exculpatory information from his defense. Fourth, Plaintiff claims that Register again committed fraud by leading him to believe he could not object during his sentencing and by coercing him into writing a self-incriminating letter that Register submitted to the court. Fifth, Plaintiff alleges that Register committed fraud for a fourth time by making him believe he could not appeal his sentence. Sixth, Plaintiff alleges Register took these action to imprison him falsely. See Compl.

Even taking these claims in the light most favorable to Plaintiff -- namely, on the face of the Complaint -- Plaintiff has only raised state law claims. Nevertheless, the same was true of the claims Plaintiff stated against the federal officer Defendants. However, in their case, Plaintiff's claims took on the form of constitutional violations and, therefore, Bivens claims, Plaintiff's allegations were that federal officers used their official capacities to falsely imprison Plaintiff. Thus, Plaintiff was complaining that the federal officer Defendants violated his constitutional right to liberty because the federal officers were federal actors acting under the color of federal law[5]. However, with respect to Defendant, Register, a private attorney, Plaintiff has not

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[5] Normally, the Court would refer to "state actors acting under the color of state law" when the case was brought against state officials pursuant to 42 U.S.C. § 1983. However, Plaintiff complained of federal government officials violating his constitutional rights. As a result, Plaintiff's claims are not brought pursuant to 42 U.S.C. § 1983, which allows suit where state officers violate a citizen's constitutional rights, but brought under the federal common law Bivens remedy, which is the court-created related remedy for violations by federal officers. In the end, it makes little difference as "'[t]he effect of Bivens was, in essence, to create a remedy against federal officers, acting under color of federal law, that was analogous to the section 1983 action against state officials.'" Abella v. Rubino, 63 F.3d 1063, 1065 (11th Cir. 1995) (quoting Dean v. Gladney, 621 F.2d 1331, 1336 (5th Cir. 1980).

stated a federal claim. Thus, if Register is not a state actor, Plaintiff has only presented state law claims.

## III. Register is Not a Federal Actor and Did Not Act Under Color of Federal Law

Defendant, Register, was neither a federal actor nor did he act under color of federal law when he represented Plaintiff in his criminal proceeding for perjury before a federal grand jury. Instead, Register was a private attorney hired with Plaintiff's money to represent him. Register was neither employed by the federal government nor was he controlled in any way by the federal government while he represented Plaintiff. In other words, Register had no more entanglement with the federal government than any other private citizen. As such, Register was not a federal actor nor did he act under the color of federal law.

There is no law to support that a private criminal defense attorney such as Register was either a federal actor or acted under color of federal law. The United States Supreme Court has held that even a public defender, paid by the state, "does not act under color of [federal] law for [Bivens] purposes" when the public defender functions in his traditional role "as counsel to a defendant in a criminal proceeding." Polk County v. Dodson, 454 U.S. 312, 324, 102 S. Ct. 445, 453, 70 L. Ed. 2d 509 (1981). In so holding, the Court noted that even though the public defender was paid by the state, he functioned as an adversary in the criminal process and

that the state could not control the public defender's actions. Id. at 320-22.[6]

The Polk case only serves to demonstrate that Register cannot be deemed a federal actor by the Court. In the case at bar, Register is certainly less entangled with the government than the public defender in Polk. Register was privately retained by Plaintiff with private funds. Therefore, Register did not depend on the government for any pay or employment. Thus, the Court finds that Register was not a federal actor and did not act under color of federal law.

Finally, Register may not be classified as a federal actor for participation in a conspiracy to deprive Plaintiff of his constitutional rights, as Plaintiff failed to plead with any detail the allegation that Register conspired with federal officers to falsely imprison Plaintiff. Eleventh Circuit law requires that "a plaintiff must show that the parties reached an understanding to deny plaintiff his or her rights" to show adequately a conspiracy to violate someone's constitutionally secured rights, Lowe v. Aldridge, 958 F.2d 1565, 1573 (11th Cir. 1992). For the purposes of Bivens "the plaintiff must plead in detail, through reference to material facts, the relationship or nature of the conspiracy between the [federal] actor(s) and the private persons." Harvey v. Harvey, 949 F.2d 1127, 1133 (11th Cir. 1992) (citing Fullman v. Graddick, 739 F.2d 553, 556-57 (11th Cir. 1984)). The allegations of Plaintiff's Complaint in the instant case "merely string together the discrete steps of the [criminal judicial] process, without showing contacts between the [Defendants] that could prove

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[6] Although the Polk case was brought under 42 U.S.C. § 1983 because it involved a state actor, the law is the same for Bivens actions. See, e.g., Bolin, 225 F.3d at 1241, Abella, 63 F.3d at 1065.

private and alleged [federal] actors had 'reached an understanding to violate [Plaintiff's] rights. " Harvey, 949 F.2d at 1133. Thus, the Court concludes that Plaintiff's Complaint "consists of purely conclusory allegations that do not plead conspiracy sufficiently to transform [Defendant, Register, ] into [a federal] actor[]." Id.

Thus, the Court finds that since Register is neither a federal actor nor acted under the color of federal law, Plaintiff has only raised issues of state law -- namely, legal malpractice, fraud, and false imprisonment.

## IV. State Law Claims Should Be Resolved In State Court

Given that the Court has found that the only remaining claims against Register are state law claims, the Court concludes that the case should be remanded to the state court in which it was originally filed. First, the Court strongly believes that the determination of state law should be left to state courts when possible. And, second, the Court believes that interests of judicial economy, fairness, convenience, and comity favor remanding the case back to state court.

As stated above, the Eleventh Circuit has strongly endorsed the view that the "[r]esolution of ... state law claims depends on determinations of state law. [And that] [s]tate courts, not federal courts, should be the final arbiters of state law." Baggett, 117 F.3d at 1353 (citing Hardy, 954 F.2d at 1553). "When coupled with the Court's discretion to exercise supplemental jurisdiction under § 1367(c), the Court finds that the state law claims remaining in this action are best resolved by the [Florida] courts. This is especially true

here where the Court [has dismissed] Plaintiff['s] federal law claim[s] prior to trial." Id. (citing United Mine Workers, 383 U.S. at 726, 86 S. Ct. at 1139); Carnegie-Mellon Univ., 484 U.S. at 350 n. 7, 108 S. Ct. at 619 n. 7; Eubanks v. Gerwen, 40 F.3d 1157 ( 11th Cir.1994)). Thus, as a matter of law, the Court believes it would be best to remand this case to the Florida court so that it can be the arbiter of these state law issues.

The Court also finds that judicial economy, fairness, convenience, and comity dictate having these state law claims decided by the state courts. A Florida court will be much more efficient with these claims as they have far more experience with Florida state law, particularly in an area such as legal malpractice. Furthermore, comity strongly favors a Florida court resolving these issues as the Florida courts have a significant interest in the possible misconduct of an attorney licensed to practice in that state's bar. The fairness and convenience factors seem to be almost in equilibrium. Fairness might tilt a little towards the remand since the Plaintiff fought to keep the case in state court and since the sole remaining Defendant, Register, did not seek federal removal but only consented to it. The convenience factor seems to favor neither court.

Thus, the Court concludes it should exercise its discretion pursuant to 28 U.S.C. § 1367(c) and decline to exercise supplemental jurisdiction over Plaintiff's remaining claims against Register. It does this because, under 28 U.S.C. § 1367(c) (3), the Court finds it has dismissed all claims over which it had original jurisdiction and the only remaining claims are state law claims.

## CONCLUSION

After careful consideration of all the parties' arguments, the Court concludes the following: (1) Plaintiff's "Motion to Set Aside The Court's Order Dismissing the Defendants: Wagner, Paul, and Ellan" should be and hereby is **DENIED**; (2) the Court should exercise its discretion and decline to exercise jurisdiction under 28 U.S.C. § 1367(c); and (3) the case should be and hereby is **REMANDED** to the state court from which it was originally removed.

**SO ORDERED**, this 6th day of February, 2001.

S/

Judge, United States District Court
Southern District of Georgia
Sitting by Designation

IN THE CIRCUIT COURT
OF THE EIGHT JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY

BRYAN E. HUNT,

Plaintiff, Case No.: 2000-CA-OO1755
Division: K

v.

LENNARD B. REGISTER, III,

Defendant.
_____/

FINAL SUMMARY JUDGEMENT

This cause having come to be heard before me on Thursday, the 12th day of April, 2001, upon the Defendant, LENNARD B. REGISTER, III's Motion for Summary Judgment and after due consideration of the evidence and argument of counsel it is:

ORDERED AND ADJUDGED:

1. The Defendant's Motion for Summary Judgment is **GRANTED**, and Plaintiff's Complaint is dismissed with prejudice. Heck v. Humphrey, 512 US 477, 114 S.CT. 2364, and 129 L.Ed. 2d 383 (1994) and; Abella v. Rubino, 63 F. 3d, 1063, 1065 (111h Cir. 1995) and Steele v. Kehoe 747 So.2d 931 (Fla. 1999) and; Section (J) and (o) of Subsection 95.11 (3) FS; Hitchmon

v. United States, 585 F. Supp. 256 (Fla. S.D. 1984) and Knowles v. Carson, 419 F. 2d 369 (5th Cir. 1969).

2. The Defendant shall go hence without delay.

3. This Court retains jurisdiction for the determination of entitlement and amount of Defendant's attorney fees and to tax costs.

DONE AND ORDERED in Chambers in Gainesville, Alachua County, Florida, this 25th day of April, 2001.

S/

Circuit Judge
Nath C. Doughtie

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No.00-15672-BB

BRYAN E. HUNT,

Plaintiff -Appellant,

versus

LENNARD B. REGISTER, III,
WILLIAM R. WAGNER, Assistant
United States Attorney, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Florida

Before ANDERSON, Chief Judge, DUBINA and CARNES, Circuit Judges.

BY THE COURT: January 29, 2001

This appeal is DISMISSED for lack of jurisdiction. The district court's October 6, 2000 order is not final and appealable because it did not dispose of all claims against all parties, and the court did not certify the order for immediate review pursuant to Fed.R.Civ.P. 54(b). See 28 U.S.C § 1291; Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984); In re Yarn Processing Paten Validity Litigation, 680 F.2d 1338, 1340 (11th Cir. 1982). Appellant's "motion for leave to proceed further in forma pauperis" and "suggestion for hearing" en banc are denied as moot.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No.00-12881-B

BRYAN E. HUNT,

Plaintiff -Appellant,

versus

LENNARD B. REGISTER, III,
WILLIAM R. WAGNER, Assistant
United States Attorney, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Florida

Before EDMONDSON, BIRCH and BARKETT, Circuit Judges.

BY THE COURT: November 7, 2001

This appeal is DISMISSED for lack of jurisdiction. The May 18, 2001, notice of appeal is untimely from the district court's order entered on October 12, 2000, and its remand order of February 6, 2001. See Fed.R.App.P. 4(a)(1)(B).

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No.00-12881-B

BRYAN E. HUNT,

Plaintiff -Appellant,

versus

LENNARD B. REGISTER, III,
WILLIAM R. WAGNER, Assistant
United States Attorney, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Florida

Before EDMONDSON, BIRCH and BARKETT, Circuit Judges.

BY THE COURT: March 26, 2002

Appellant's motion for reconsideration of our November 7, 2001, order dismissing for lack of jurisdiction this appeal, is DENIED.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA

vs.

BRYAN EDMOND HUNT INFORMATION

_____/

THE UNITED STATES ATTORNEY CHARGES:

That on or about February 14,1995, in the Northern District of Florida, the Defendant,

BRYAN EDMOND HUNT,

while under oath and testifying in a proceeding before a federal grand jury in the Northern District of Florida, knowingly did make a false material declaration, that is to say:

At the time and place aforesaid, the grand jury was conducting an investigation to determine whether violations of Title 18, United States Code, Section 844(i) and Title 26, United States Code, Sections 5841 and 5861(d) had been committed, and to identity the persons who had committed these crimes.

It was material to the said investigation that the grand jury ascertain if Jason Craft and others had possessed pipe bombs and whether Jason Craft had used such explosives to destroy property used in activities affecting interstate commerce.

At the said time and place alleged, BRYAN EDMOND HUNT appearing as a witness under oath at a proceeding before the grand jury knowingly made the

following declaration in response to questions with respect to the material matter alleged in the above preceding paragraph as follows:

Q: Could you tell the grand jurors ... of the times you have seen him explode pipe bombs?
A: We have exploded some over in the quarries on two occasions. And then when I lived with him in November, behind Prairie view where we lived, there was an open field, and we exploded about two or three there. And those are the only ones I have seen him explode.

* * *

Q: At any time, sir, did you see Mr. Craft throw a bomb at a jogger?
A: No, sir.

* * *

Q: And do you recall telling Detective Kettle that Mr. Craft had told you that he had thrown a bomb at a jogger on 34th Street in Gainesville, Florida, and that the bomb had detonated near the jogger?
A: I don't recall that. ... I never made that statement.

The aforesaid underscored testimony of BRYAN EDMOND HUNT, as he then and there well knew and believed, was false in that:

1. On or about October 13, 1993, BRYAN EDMOND HUNT told ATF Special Agent Joseph M.

Riehl and Alachua County Sheriff Detective Mike Kittle, about Craft discussing the throwing a bomb at a jogger on 34th street, Gainesville, Florida, as well as the reaction of the victim to the explosion.

2. At the time of his testimony, BRYAN EDMOND HUNT had personal knowledge of Jason Craft's possession of pipe bombs at numerous times and places in the Gainesville, Florida area including at: the throwing of a bomb at a jogger on 34th street; the bombings of residential mailboxes; the bombing of a bathroom at a recreation area; and the bombing of a construction truck, among others.

All in violation of Title 18, United States Code, section 1623.

September 11, 1995

s/

P. Micheal Patterson
United States Attorney